

**REMARKS**

Claims 1-51 are pending in this application. By this Amendment, the specification and claims 1-51 are amended. Independent claims 1 and 24 are amended for clarity and to even more clearly distinguish over the applied references. The other amended claims are amended for clarity. The title is amended and unnecessary reference numerals and text are deleted from the Summary section of the specification. No new matter is added.

**I. Information Disclosure Statement**

The Examiner is requested to consider the information listed in the Information Disclosure Statements filed on July 16, 2008 and on August 28, 2008. The August 28 Information Disclosure Statement re-submits the previously cited non-U.S. patent references. Although Applicants had previously submitted the non-U.S. patent references, the PTO failed to scan them. Consideration of the references is requested.

**II. Allowable Subject Matter**

Applicants appreciate the Office Action's indication that claims 36-47, 50 and 51 are allowed and that claims 3, 15-17, 19, 25, 28-33 and 35 would be allowable if rewritten in independent form. Applicants submit that all pending claims are in condition for allowance as detailed below.

**III. Formal Matters**

The Office Action objects to the Title. The Title is amended to overcome the objection. Withdrawal of the objection is requested.

**IV. The Claims Define Patentable Subject Matter**

The Office Action rejects claims 1, 2, 4-14, 22, 24, 26, 27, 48 and 49 under 35 U.S.C. §102(e) over U.S. Patent Publication No. 2005/0132914 to Mulken et al. The rejection is respectfully traversed.

Mulkens et al. fails to disclose the combination of features recited in independent claim 1, including a detection apparatus that performs the claimed detections at a time when the exposure light is emitted onto the substrate. Mulkens et al. discloses that detector 22 is used to determine which one of the optical elements 9-12 should be used to ensure that accurate focusing takes place depending on whether the apparatus is used in a wet (immersion) mode or a dry mode. See Mulkens et al. paragraphs [0105] and [0112]. In another embodiment, described in paragraph [0115], Mulkens et al. discloses that the user can manually select one of optical elements 9-12 based on whether exposure takes place in a wet or dry mode. Mulkens et al. does not indicate that its detector 22 should be used at a time when the exposure light is emitted onto the substrate. Rather, the Mulkens et al. detector is used before exposure in order to determine which of the optical elements 9-12 should be used.

Mulkens et al. fails to disclose the combination of features recited in independent claim 24, including a detection apparatus that "obtains at least one of a size and a shape of an immersion area in a direction perpendicular to an optical axis of the projection optical system, that is formed between the projection optical system and an object disposed on an image plane side of the projection optical system, based on a light receiving result of the light receiving portion" (emphasis added). Mulkens et al. only discloses that detector 22 detects the presence and/or quantity of liquid. See paragraphs [0105] and [0112].

Thus, for the reasons described above, claims 1 and 24 and their dependent claims are patentable over Mulkens et al. Withdrawal of the rejection is requested.

The Office Action rejects claims 1, 20-23 and 48 under 35 U.S.C. § 102(b) over U.S. Patent No. 5,610,683 to Takahashi. The rejection is respectfully traversed.

Takahashi also fails to disclose a detection apparatus that performs the claimed detection at a time when the exposure light is emitted onto the substrate. Liquid level gauge

801 of Takashi is operated before exposure takes place. Withdrawal of the rejection is requested.

The Office Action rejects claims 18 and 34 under 35 U.S.C. §103(a) over Mulkens et al. The rejection is respectfully traversed. Claims 18 and 34 are patentable for at least the reasons that claims 1 and 24 are patentable, as well as for the additional features they recite. Accordingly, Applicants request withdrawal of the rejection.

**V. Double Patenting Rejection**

The Office Action rejects claim 1 based on non-statutory obviousness-type double patenting over claim 1 of copending Application No. 11/651,551. The amendment to claim 1 renders the rejection moot. Withdrawal of the rejection is requested.

**VI. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number set forth below.

Respectfully submitted,



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MAC/jls

Attachment:  
Petition for Extension of Time

Date: December 16, 2008

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